IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.6.2007

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

T.C.(A) Nos.787 to 789 of 2007

Commissioner of Income Tax Chennai. ..	Appellant in all appeals

Vs.

India Nippon Electricals Ltd. Aalim Centre, 82, Dr.R.K.Salai Mylapore, Chennai. ..	Respondent in all appeals

Appeals under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'C' Bench dated 25.8.2004 in ITA Nos.2307 to 2309/97, for the assessment years 1991-92 to 1993-94 against the order of The Commissioner of Income Tax (Appeals) IV Madras-34 dated 16/10/97 in ITA Nos.398,399 & 400/97-98 against the order of the Deputy Commissioner of Income Tax Spl.Range X, Chennai-34 dated 25/4/97 GIR.No.I/47-081-CQ-6022 for the Assesment Years - 1991-92,1992-93,1993-94 respectively.

For Appellant : Mr.J.Narayanasamy, Sr.S.C.

J U D G M E N T
(Delivered by P.D.DINAKARAN, J.)

The above tax case appeals are directed against the order of the Income-tax Appellate Tribunal in ITA Nos.2307 to 2309/97 dated 25.8.2004 for the assessment years 1991-92 to 1993-94 respectively, raising the following substantial questions of law.

> "(a) Whether in the facts and circumstances of the case, the Tribunal was right in holding that the issue of, whether interest received from deposit made with company/bank, and interest from income tax department are derived from the industrial undertaking, is debatable issue and the same cannot be decided vide rectification proceedings under Section 154?

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(b) Whether in the facts and circumstances of the case, the Tribunal was right in not following the decision of the Supreme Court in the case of Pandian Chemicals reported in 262 ITR 278 the interest from deposits while computing the deduction under section 80HH?"

2. The brief facts led to the filing of the above appeals are as under.

The assessee filed its return for the assessment years 1991-92 to 1993-94 claiming deduction of interest on deposits in the computation of benefit under Section 80HH and 80I of the Act and the same was allowed by the Assessing Officer. However, the Assessing Officer withdrew the deduction vide rectification proceedings under Section 154 of the Act. Hence, the assessee filed appeals before the Commissioner of Income Tax (Appeals). The Commissioner upheld the order of the Assessing Officer with a direction to include the interest amounting to Rs.3.30 lacs in the profits of the undertaking. On further appeals preferred by the assessee before the Income Tax Appellate Tribunal, the Tribunal, holding that the order of the Assessing Officer cannot be rectified, as the issue was a debatable one, allowed the appeals. Hence, the present appeals.

3. In Commissioner of Income Tax v. Sharp Industries (282 ITR 336), where the claim of the assessee therein with regard to deduction under Sections 80HHC and 80I of the Act was disallowed under Section 154 of the Act, this Court has held that the claim of the assessee could not be disallowed in a proceeding under Section 154 of the Act, especially when the interest income was included in the profit of the business.

4. Applying the ratio laid down in the decision cited supra, we do not find any substantial question of law arises for our consideration. Accordingly, these appeals are dismissed. Consequently, M.P.Nos.1 of 2007 is also dismissed.

kpl

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To,

1. The Asst.Registrar,
   Income Tax appellate Tribunnal,
   Bench 'C' Rajaji Bhavan III Floor,
   Besant Nagar, Chennai-90 (5 copies)

2. The Commissioner of Income Tax (Appeals)IV,
   Madras-34.

3. The Deputy Commissioner of Income Tax,
   Spl.Range X, Chennai -34.

4. The Commissioner of Income Tax,
   Chennai-34.

+1 cc to Mr.Pushya Sitaraman, Advocate Sr.No.36721.

TEJ(CO)
dcp/9.7.07

TC(A) Nos.787 & 789 of 2007.

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